IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 26 OF 2007

Smt. Jyoti w/o Sukhdeo Tumane,
aged about 43 years,
occupation – Nil, resident of
Kharbi Road, Nagpur. ... APPELLANT

Versus

Sukhdeo s/o Ramkrishnaji Tumane,
aged about 51 years, occupation -
Service, r/o Navi Shukrawari,
Near Mutton Market, Nagpur. ... RESPONDENT

Shri R.T. Anthony, Advocate for the appellant.
Shri D.M. Kale, Advocate for the respondent.

.....

CORAM : J.P. DEVADHAR AND
B.P. DHARMADHIKARI, JJ.
DATE OF RESERVING THE ORDER : APRIL 05, 2007.
DATE OF PRONOUNCING THE ORDER : APRIL 23, 2007

ORDER :

By this appeal under Section 19 of the Family Courts Act, the appellant – wife has challenged the judgment and decree dated 27.09.2006 delivered by the Family Court No. 4, Nagpur in Petition No.A-395/2004. The said petition came to be filed by present

respondent – husband under Section 13(1)(1)(1-A) and (II) of Hindu Marriage Act, for a decree of dissolution of marriage on the ground that present appellant had sexual intercourse with some other person apart from him after solemnization of marriage and treated him with cruelty and has ceased to be a Hindu by her conversion to Christianity.

2. The Family Court has framed issues in this respect and has answered the same as mentioned below in paragraphs 5 & 6 of its judgment :

> "1. Does the petitioner prove that the respondent had illicit relations with Ankush Pardhi ?
>
> In the negative – The petitioner proved that the respondent had voluntary sexual intercourse with another person other than the petitioner, after the solemnization of the marriage.
>
> 2. Does he prove that she converted herself to Christianity?
>
> In the negative.

3. Does the respondent prove that the petitioner has married with one Seema and has a male child from her ?

In the negative.

4. Is the petitioner entitled to a decree of dissolution of Marriage ?

In the affirmative.

5. What order ?

Petition is allowed as per order below.”

The Family Court in view of these findings found that the respondent – husband has made out a case for divorce and has accordingly proceeded to dissolve marriage by granting decree of divorce. It also granted respondent – wife before it permanent alimony of Rs.1,500/- per month. It can be mentioned here that the respondent in present appeal i.e. husband has separately filed an appeal challenging said grant before this Court.

3. Considering the nature of controversy and findings

recorded by the Family Court, we have heard Shri Anthony, learned counsel for the appellant – wife and Shri Kale, learned counsel for the respondent – husband finally at the stage of admission itself.

4. Shri Anthony, learned counsel for the appellant has contended that finding of Family Court about appellant having sexual relations with another person are perverse and there was no such evidence. He contends that the evidence about delivery of a girl child by the appellant produced by the respondent – husband from Government Medical College could not have been accepted because said record has not been proved as required by law. He has further contended that there was no evidence about girl child by the appellant in September 1994. He has further stated that reliance upon record of Life Insurance Corporation by the Family Court is again misconceived because that record is not proved as required by Evidence Act. He has contended that signature upon application for change of nomination in policy is denied by present appellant and the Family Court has overlooked this aspect. It is, therefore, his contention that in these circumstances, the finding on

issue No.1 delivered by Family Court is unsustainable and hence the entire judgment is liable to be quashed and set aside. He has also contended that the alimony amount granted to the appellant is too meager and therefore needs to be enhanced.

5. Shri Kale, learned counsel for the respondent – husband has stated that the Family Court could not have proceeded to grant permanent alimony to the appellant after recording a finding on issue No.1 in favour of present respondent. He contends that though the respondent could not prove that appellant had sexual relations with Shri Ankush Pardhi, enough material was brought on record in the shape of application for effecting nominations, for recording change of name to show that the appellant was staying with Shri Ankush Pardhi as his wife. He further states that the delivery of female child on or before 15.9.2004 by the appellant is also established by producing government record and also by examining independent witnesses. He has invited attention to the fact that the appellant refused to get herself medically examined to find out whether she delivered any child in 2004. He contends that

the documents have been produced by independent and impartial authorities and the Family Court has rightly relied upon the same. He, therefore, contends that the judgment of Family Court does not call for any interference in this appeal. He further states that as First Appeal filed by the respondent challenging grant of alimony to present appellant is belated, an application for condoning delay has been moved in it.

6. Shri Anthony, learned counsel for the appellant has accepted notice in appeal filed by the husband on the point of condonation of delay and said matter has been adjourned to next week. We find that the issue of grant of permanent alimony is totally different and unconnected issue and consideration of this appeal need not be postponed for that purpose.

7. We have perused the impugned judgment in the light of arguments advanced. The perusal of judgment reveals that the Family Court has found that present appellant – wife delivered a female child at Government Medical College and Hospital in Ward

No.22 in September 2004. It also found that there was evidence of Superintendent of Government Medical College and Hospital, Nagpur, about such delivery and treatment given to Jyoti Ankush Pardhi and there was also evidence of two witnesses viz. Asha Madne and Chandrakala Madne about said delivery by present appellant. It has thereafter found that when husband moved application for examining wife medically to find out the delivery of a child on 15.9.2004, the wife refused to get herself medically examined and therefore Family Court has drawn adverse inference against her. In view of this evidence, Family Court has reached a finding that she delivered a female child on 15.9.2004. The finding is based upon evidence of Asha Madne (Exh. 52) and Chandrakala Madne (Exh. 53). These findings are not demonstrated to be perverse by the appellant before us. It further appears that the Superintendent Government Medical College submitted report vide Exh. 57 along with extract from the register and as per those records Jyoti Ankush Pardhi was admitted in hospital on 14.9.2004 in Ward No.22 as per entry No.35040 and she delivered a female child by caesarean operation at 5.32 P.M. on that date. It is, therefore,

apparent that these documents clearly reveal the delivery of present appellant in the year 2004. Family Court has also considered the stand of present appellant that she had undergone caesarean operation in 1984 and it has been recorded that in medical examination it is possible to find out whether the delivery has taken place recently or long back. This application of mind by Family Court is again not shown to be erroneous to us.

8. Apart from this, Family Court has found that there was letter dated 13.09.2004 issued by Life Insurance Corporation to present appellant and Family Court has reproduced said letter in paragraph 17 of its judgment. The said letter is in pursuance to a request for change of nomination made by present appellant and it appears that present appellant wanted name of her second husband Shri Ankush to be substituted as her nominee. Life Insurance Corporation stated that they required divorce papers and a document showing valid present marital status for the purposes of effecting change of nomination in favour of second husband. They have also stated that they have retained original policy with them. The application submitted by present appellant for nomination has

been produced before Family Court by the respondent – husband along with list of documents and Family Court has found that the appellant – wife had changed her name from Sou. Jyoti Sukhdeo Tumane to Sau. Jyoti Ankush Pardhi. The husband also produced a xerox copy of notice issued to Life Insurance Corporation for change of name and he has also identified her signature on that copy. Family Court also found that in all these documents below the name of wife, address of Shri A.L. Pardhi was mentioned. Summons was also issued to L.I.C. directing them to produce all documents and accordingly along with application on Exh. 83, L.I.C. produced various documents with respect to policy of wife and Family Court has found that these documents also reveal that present appellant changed her name from Jyoti Sukhdeo Tumane to Jyoti Ankush Pardhi and she also changed her address in L.I.C. records. The Family Court has also found that as per Section 14 of Family Courts Act, it can receive as evidence any report, statement, documents, information or matter which in its opinion may assist it effectually with a dispute whether or not the same is otherwise relevant or admissible under the Indian Evidence Act. The consideration of

documents of L.I.C. by Family Court has not been shown to be either perverse or illegal. Apart from contending that said documents are not proved, the appellant has not pointed out as to why and how Family Court was not justified in invoking Section 14 of Family Court Act for said purpose.

9. Thus, it is apparent that before Family Court, there was evidence about delivery of a female child by present appellant on 14.9.2004, denial by present appellant to subject herself to medical examination to find out said fact of delivery and evidence in the shape of documents produced by L.I.C. showing that appellant wanted to change her name from Jyoti Sukhdeo Tumane to Jyoti Ankush Pardhi. She also changed her address and also wanted to change her nomination. Family Court has to answer the issues after considering preponderance of probabilities and the material produced by the respondent – husband before Family Court clearly reveal that the present appellant had sexual intercourse with somebody else apart from present respondent – husband and therefore she delivered a female child on 14.9.2004. As already

observed above, this application of mind by Family Court and consideration of evidence has not been demonstrated to be erroneous or perverse by the present appellant.

10. In these circumstances, we find that there is no substance in the present First Appeal. The same is accordingly dismissed. No order as to costs.

JUDGE **JUDGE**

****

*GS.